

***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No.6641 of 2000

% 12-02-2007

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Smt.M.Gita Devi

...Petitioner

And

\$ The Secretary, Department of Health, secretariat buildings,
Hyderabad and others

...Respondents

! COUNSEL FOR PETITIONER: Mr.S.C.Jayashree Sarathy

^ COUNSEL FOR RESPONDENTS: Government Pleaders for
Medical and Health and Home

< Gist:

> Head Note:

? CITATIONS:

1. AIR 2000 SC 1888
2. 2004 ACJ 1479

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 6641 OF 2000

Dated 12th February 2007

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Between

Smt.M.Gita Devi

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Secretariat Buildings, Hyderabad & others

...Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 6641 OF 2000

ORDER:

This writ petition presents an unfortunate saga of a mother. The grief suffered by the petitioner would be difficult even to imagine.

The petitioner gave birth to a female child on 22.12.1999, at a private hospital in Sanathnagar, Hyderabad. She has decided to undergo Family Planning operation. Since the facility was available at Gandhi Hospital, Secunderabad, she got herself admitted in that hospital, on 29.12.1999. On the same day, necessary operation was performed, and she was required to be in the hospital for two days, for post operational treatment. On the mid night of 30.12.1999, when she woke up, she found that the infant was missing. Even in such a precarious condition, she woke up and ran here and there, in search of the missing baby. Her mother, who was attending on her, also

desperately ran around the premises of the hospital, but in vain. A complaint was lodged with the concerned police station, as well the Superintendent of Gandhi Hospital, Secunderabad. Though an FIR was registered under Section 363 of IPC, as to missing of a child, there was no improvement. It is under these agonizing circumstances, that the petitioner seeks the relief of a direction to the respondents, to speed up the investigation for tracing the missing child, and for payment of compensation of Rs.1,00,000/-, for the mental agony suffered by her. The petitioner contends that but for the negligence, on the part of the respondents, in providing adequate security at the hospital, the incident would not have occurred.

Respondents 1 and 2, who are concerned with the administration of the hospital, did not file any counter affidavit. The 3rd respondent filed a counter affidavit, admitting the factum of missing of the child of the petitioner from Gandhi Hospital. It is stated that by the very nature of functioning of the hospital, it is not possible to have the close scrutiny of the persons, who enter and leave the hospital. He stated that soon after the complaint was received, the matter was investigated by the Superintendent of the Hospital, and the Police authorities. The petitioner was said to have been put up in General Ward, where number of patients, and their attendants, keep on moving. An attempt is sought to be made, to point out an inconsistent version said to have been put forth by the mother of the petitioner.

Smt. C.Jayashree Sarathy, learned counsel for the petitioner, submits that due to the negligence on the part of the hospital authorities, the child of the petitioner was stolen. She contends that the grief suffered by the petitioner cannot be explained. Learned counsel points out that though a case was registered, necessary

attention was not paid, in the matter of further investigation.

Learned Government Pleader for respondents, on the other hand, submits that Gandhi Hospital, Secunderabad, is one of the major hospitals at the state level, wherein treatment is provided for to hundreds of persons every day in various disciplines. He submits that the petitioner was being looked after by none other than her mother, and had they taken proper care, the incident would not have occurred.

According to him, the incident was first of its kind, and adequate measures were taken, to ensure that such instances do not recur.

The fact that the petitioner was admitted to Gandhi Hospital on 29.12.1999, for the purpose of undergoing Family Planning operation, is admitted. The respondents did not deny the allegation of the petitioner that her child was stolen from the hospital. Theft of the child right from the bosom of the mother would indicate the drifting of moral and human levels in the society. Even carnivorous animals would hesitate to have infant animals, or their mothers, as their prey. In the so-called uncivilized societies in the remotest tribal areas also, such ghastly incidents do not occur. We find instances where humanity is exhibited in rescuing an unattended children. However, right in the heart of a metropolis, such a ghastly incident has taken place.

It may be true that hundreds and thousands of persons enter the hospital, either to get the treatment as inpatients or out patients, or as attendants on patients. It may also be difficult to have meticulous check on each and every individual, that enters the hospital. Notwithstanding these difficulties, the respondents cannot escape from their liability, or refuse to acknowledge their failure, in the context of the theft of the child of the petitioner. The Police may have its own

difficulty in tracing the child. Investigation into such matters would certainly pose problems. At the same time, the agony of the petitioner continues and registration of cases, or for that matter, a semblance of investigation into it, is hardly of any solace to her.

In matters of this nature, it is not easy to mould the relief to be granted to the aggrieved persons. So far as the first limb of the prayer in the writ petition is concerned, it needs to be noted that 7 years have elapsed, and it is virtually next to impossibility, to expect the recovery of child, unless some miracle happens, or the persons who know the things, volunteer to divulge the information. The second limb of the prayer is about payment of compensation. Though there are no direct precedents on this aspect, the situation can be analyzed through contrast, than comparison.

In ***STATE OF HARYANA v. SMT. SANTRA***^[1], the Supreme Court was dealing with a case, where a woman had undergone Family Planning operation, but gave birth to a child, thereafter. On finding that the birth of a child after operation would bring its own difficulties for the mother, the Supreme Court upheld the decree granted by the trial court, awarding compensation of about Rs.2,50,000/-. In ***SHOBHA v. GOVERNMENT OF NCT, DELHI***^[2], the Delhi High Court awarded compensation for the agony suffered by a mother, who gave birth to a child, after operation. Compared to these instances, the agony of a mother, whose child is stolen away, is very high and almost not amenable to quantification. The petitioner claimed a sum of Rs.1,00,000/- as compensation. By any standard, it is too moderate, if not less. The respondents 1 and 2 are under obligation, to compensate the petitioner for the mental agony undergone by her, on

account of their lapses.

For the foregoing reasons, the writ petition is allowed, and the respondents 1 and 2 are directed to pay a sum of Rs.1,00,000/- (one lakh) as compensation to the petitioner, with interest at 6%, from the date of filing of the writ petition i.e. 19.4.2000, till 31.01.2006, within two months from today.

12th February 2007

Note: L.R.copies be marked.
(B/o)
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[\[1\]](#) AIR 2000 SUPREME COURT 1888

[\[2\]](#) 2004 ACJ 1479